



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2022-0477; FRL-10516-01-R5]**

**Air Plan Approval; Ohio; Sulfur Dioxide Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), revised sulfur dioxide (SO<sub>2</sub>) regulations submitted by Ohio on May 23, 2022. Ohio updated its regulations to correct facility information which has changed, remove requirements for shutdown facilities and units, update references, consolidate county-wide requirements, address style changes, and revise requirements for the Veolia Fort Hill plant in Miami, Ohio and DTE St. Bernard facility in Cincinnati, Ohio. EPA believes that the revisions improve the clarity of the rules without affecting the stringency and therefore is proposing to approve the submitted revisions with exception of selected paragraphs in Ohio Administrative Code (OAC) Chapter 3745-18.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2022-0477 at <https://www.regulations.gov>, or via email to [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for

submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Tyler Salamasick, Life Scientist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6206, [salamasick.tyler@epa.gov](mailto:salamasick.tyler@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

## **I. Background**

Ohio law requires a five-year review of all regulations in which the state cleans up and clarifies existing rules. Ohio conducted a review of OAC Chapter 3745-18 "Sulfur Dioxide Regulations" that contains Ohio's air emission regulations for SO<sub>2</sub> and includes both generally applicable rules and county specific rules. The state revised the rules to correct facility information which has changed, remove requirements for shutdown facilities and units, update references, consolidate county-wide requirements, address style changes, remove facility-specific requirements for the DTE St. Bernard facility in Cincinnati, Ohio, and revise requirements for the Veolia Fort Hill plant in Miami, Ohio. On May 23, 2022, Ohio submitted the revised rule to EPA as a revision to Ohio's state implementation plan (SIP). Ohio held a public hearing on the revised rule on December 16, 2021. Ohio provided a summary of the comments received and its responses to the comments.

## **II. EPA Review**

EPA has reviewed Ohio's submitted revised SO<sub>2</sub> rules as discussed below.

Ohio revised OAC 3745-18-01 "Definitions and incorporation by reference" to update the Code of Federal Regulations publication dates. Throughout the rule, Ohio updated facility information, such as names and addresses, and revised rule language to reflect changes in style. These updates are merely administrative and do not change the requirements of the rule.

Ohio promulgated a new chapter, OAC 3745-18-02, "General

countywide emission limits." This rule does not create new requirements, but rather consolidates the countywide emission limits previously contained in county specific rules. Correspondingly, Ohio rescinded the county specific rules that had been incorporated into the general countywide emission limits and contained no facility specific information. These revisions do not change the applicable requirements of the rules.

Ohio removed facility information for the facilities and emissions units that were permanently shut down. The removal of obsolete emission limits for units that have permanently closed and for which the permits to operate have been revoked does not indicate permission to increase emissions. If the facilities were to restart operations, Ohio would require a new permit-to-install, which would establish new emissions limits based on the current SO<sub>2</sub> standard.

Ohio removed the facility-specific requirements in OAC 3745-18-37(GG) for the DTE St. Bernard facility. These requirements were originally promulgated to regulate sulfur emissions from coal fired boilers in use at the facility. DTE St. Bernard removed the remaining coal fired boiler and replaced it with a natural gas boiler. DTE St. Bernard's state permit now requires the facility to only use natural gas in the emissions unit. Because OAC 3745-18-06(A) exempts units from SO<sub>2</sub> control requirements when natural gas is the only fuel burned, and DTE St. Bernard's permit prohibits the facility from burning

coal, the removal of the facility-specific SO<sub>2</sub> requirements in OAC 3745-18-37(GG) for DTE St. Bernard does not relax the requirements applicable to the facility.

Ohio also updated OAC 3745-18-37(KK) for the Veolia Fort Hill facility to comply with best available control technology (BACT) and set a lower short-term emission limit and mass cap, as required by an EPA consent decree. Ohio performed air dispersion modeling which demonstrated lower SO<sub>2</sub> concentrations for both the 3-hour and 24-hour averaging periods, as compared to the pre-consent decree SIP requirements in OAC 3145-18-37(KK). Also, Ohio determined, when making area designation recommendations for Round 3 of the 2010 1-hour SO<sub>2</sub> national ambient air quality standards (NAAQS), the Veolia Fort Hill facility did not have a significant impact. EPA agreed with Ohio's determination and approved Ohio's Round 3 designations (without this facility) on January 9, 2018 (83 FR 1098).

CAA section 110(1) states that SIP revisions cannot be approved if they interfere with applicable requirements concerning attainment of an air quality standard or making reasonable further progress. Ohio's revisions to OAC 3745-18 do not allow for an increase in emissions and are expected to be protective of the NAAQS. Therefore, this proposed revision to the SIP is consistent with the requirements of CAA section 110(1).

### **III. What Action is EPA Taking?**

EPA is proposing to approve the revisions to OAC 3745-18 SO<sub>2</sub>

rules submitted by Ohio into Ohio's SIP on May 23, 2022, with the exception of selected paragraphs in OAC 3745-18-04.

EPA is proposing not to act on OAC 37-18-04(D)(2), (D)(3), (D)(6), (E)(2), (E)(3), and (E)(4). These paragraphs have not been previously approved by EPA and are outside the intent of this proposed SIP revision - to improve the clarity of the rules.

#### **IV. Incorporation by Reference.**

In this action, EPA is proposing to include final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio rules OAC 3745-18-01 through OAC 3745-18-06 [with the exception of OAC 3745-18-04(D)(2), (D)(3), (D)(6), (E)(2), (E)(3), and (E)(4)], OAC 3745-18-08, OAC 3745-18-10, OAC 3745-18-11, OAC 3745-18-15, OAC 3745-18-23, OAC 3745-18-24, OAC 3745-18-26, OAC 3745-18-28, OAC 3745-18-31, OAC 3745-18-33, OAC 3745-18-35, OAC 3745-18-37, OAC 3745-18-47, OAC 3745-18-49, OAC 3745-18-53, OAC 3745-18-54, OAC 3745-18-56, OAC 3745-18-61, OAC 3745-18-63, OAC 3745-18-68, OAC 3745-18-69, OAC 3745-18-77, OAC 3745-18-78, OAC 3745-18-80, OAC 3745-18-82 through OAC 3745-18-85, OAC 3745-18-91, and OAC 3745-18-92, as effective on February 2, 2022, discussed in section II of this preamble. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more

information).

Also in this document, EPA is proposing to remove EPA-Approved Ohio rules OAC 3745-18-07, OAC 3745-18-09, OAC 3745-18-12 through OAC 3745-18-14, OAC 3745-18-16 through OAC 3745-18-22, OAC 3745-18-25, OAC 3745-18-27, OAC 3745-18-29, OAC 3745-18-30, OAC 3745-18-32, OAC 3745-18-34, OAC 3745-18-36, OAC 3745-18-38 through OAC 3745-18-46, OAC 3745-18-48, OAC 3745-18-50 through OAC 3745-18-52, OAC 3745-18-55, OAC 3745-18-57 through OAC 3745-18-60, OAC 3745-18-62, OAC 3745-18-64, OAC 3745-18-65, OAC 3745-18-67, OAC 3745-18-70 through OAC 3745-18-76, OAC 3745-18-79, OAC 3745-18-81, OAC 3745-18-86 through OAC 3745-18-89, OAC 3745-18-93, and OAC 3745-18-94 from the Ohio SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

## **V. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR



7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: January 19, 2023.

Debra Shore,  
*Regional Administrator, Region 5.*

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